SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1970

No. 666

THE ROCKET FREIGHT LINES CO., *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

AND

TULSA GENERAL DRIVERS, WAREHOUSEMEN & HELPERS LOCAL UNION 523, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled case on June 12, 1970.

OPINIONS BELOW

The decision of the National Labor Relations Board, which is reprinted in Appendix A, is reported in 176 NLRB No 94. The opinion of the Court of Appeals which

is reprinted in Appendix B, is reported in ____ F. 2d, ____, 63 L. C. ¶ 10, 954.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 12, 1970. The jurisdiction of this Court is invoked under 28 USC § 1254 (1).

QUESTION PRESENTED

Did Local Union 523 violate Section 8(b) (1) (A) of the National Labor Relations Act by fining its members $250.00 each for returning to work following acceptance of their employer's offer by a majority of the employees in the bargaining unit?

STATUTES INVOLVED

Section 7 of the National Labor Relations Act 29 USC 157, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3).

Section 8(b) (1) (A) of the National Labor Relations Act, 29 USC 158(b) (1) (A) provides:

> (b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided, that this paragraph shall not impair the right of a labor orgauization to prescribe its rules with respect to the acquisition or retention of membership therein; . . .

STATEMENT OF THE CASE

On March 29, 1968, following charges filed by The Rocket Freight Lines Co. (hereinafter called Rocket), the Regional Director of the Sixteenth Region of the National Labor Relations Board issued a complaint against Tulsa General Drivers, Warehousemen & Helpers Local Union 523 (hereinafter referred to as "Local 523"), alleging violations of Section 8(b) (1) (A) of the National Labor Relations Act [29 U.S.C.A. § 158(b) (1) (A)]. The Board dismissed the complaint in its entirety and the Tenth Circuit denied a Petition For Review filed by Rocket.

The aforementioned complaint alleged in substance that Local 523 violated Section 8(b) (1) (A) of the National Labor Relations Act by levying fines against its members-employees of Rocket, because of their failure to observe a picket line which continued, notwithstanding the fact that Rocket and Local 523 had previously reached agreement on all provisions of a collective bargaining contract and said contract was ratified by a majority of the employees covered thereby (see GC-1 Amended Complaint, R. 1).

The facts upon which the allegations of the complaint were predicated are, for the most part, not in dispute. Thus, in May of 1967,[1] Local 523 (Tulsa), Local 516 (Muskogee), and Local 886 (Oklahoma City) of the International Brotherhood of Teamsters,[2] acting jointly,

[1] All dates refer to 1967 unless otherwise indicated.

[2] Unless otherwise indicated, the term "Teamsters" refers to all three local unions.

entered into negotiations with Rocket for a contract to replace the one which had expired on March 31, 1967 (R. 28-29). Rocket's total complement of employees, almost 70 men, constitutes a single bargaining unit (R. 7).

A meeting was held on May 15, which was attended by a number of other motor carriers. At this meeting, Rocket advised the Teamster representative that it wished to bargain apart from the other trucking companies and that it would not further participate in the May 15 meeting (R. 11). The Teamsters agreed and Rocket left the meeting (R. 28-29). No mention was made at the meeting concerning the procedure to be followed in reaching a binding agreement (R. 39-40). No mention whatsoever was made as to the part the International Brotherhood of Teamsters would take in the negotiations (R. 40), nor was the Union Constitution mentioned (R. 40).

Thereafter, negotiating sessions were held on May 17, May 24, and June 6 and June 22 (R. 11). At each of these meetings representatives of all three Locals were present (R. 11). At the meetings held on May 17, May 24 and June 6, Rocket was represented by Jess Crook, Jr., its President (R. 11). Again no mention was ever made during any of these meetings concerning the part the International Union would play in the negotiations (R. 40-41). On June 7, a strike began (R. 11). On June 22, Rocket again met with the representatives of the three Local Unions, and an agreement was reached on everything that had separated the parties with the understanding that before the agreement would be final it would have to be approved by the membership of the three Locals (R. 11, 29-30). A vote was taken on June 22 and 23, among the Rocket employees represented by the three Locals, and a *majority* of those employees ratified the proposed contracts (R. 11, 30-31). Before the vote was taken, Rocket and the Teamsters agreed and under-

stood that a single vote would be taken among all employees of Rocket regardless of the Local to which they belonged (R. 31, 32).

At the meeting on June 22, Clarence Mandoiza, an International representative of the Teamsters Union who had been present at all but one of the earlier meetings (R. 39-40), said he would highly recommend the agreement to the membership and to the International (R. 36-37). This was the first time in the negotiations that any mention had been made of the International Union (R. 37). In the past years it had not been the practice to require International approval before the contract became effective (R. 49-54), as ratification by the employees was all that had been formerly required (R. 49-54).

At the ratification meeting on June 23, held by members of Local 523, Union Representative Enos Boyd chaired the meeting (R. 56). He told the employees the other Locals had ratified the contract and that International Representative Mandoiza had recommended that the employees accept the contract (R. 56-57). After Local 523 voted, and the vote was counted, Boyd told the employees, "You now have a contract" (R. 57).

At 3:00 P.M. on June 23, the pickets were removed from Rocket's Tulsa terminal (R. 57). On June 29, Teamster representatives informed Rocket and the employees that the contract had been disapproved by the International and directed that the picket line be re-established (R. 33-34; 57-58). The pickets thereafter continued until July 19 (R. 34). On July 10, Robert W. McClarrinon, a picket captain and a member of Local 523, wrote a letter asking the International Union to approve the contract (R. 59-60; 93-94). He also circulated petitions among the employees of Rocket and filed these petitions with the International Union and with the National Labor Relations Board. These petitions in substance requested approval of the contract (R. 59-62; 94-97).

On July 17, a number of employees of Rocket crossed the picket line and returned to work (R. 8). Thereafter, Local 523 instituted action against these employees and ultimately fined each of them $250.00 for crossing the picket line (R. 8).

On July 19, the picket line was removed (R. 39). On or about July 26, Rocket and the Teamsters signed the contract (R. 35; 98-103). The contract signed on July 26 is identical to the contract prepared by the Teamsters and delivered to the Company shortly after the employees had ratified the agreement on June 26 (R. 37-38; 90-93). The contract signed by the parties provides for an effective date of June 26 (see Supplements to Respondent's Exhibits 2(a) and 2(b), R. 98-103). Following refusal of the Union to sign the contract, which had been agreed to by Rocket and the Teamsters and ratified by the employees, the Company filed 8(b)(3) charges with the Regional Director of the National Labor Relations Board for the 16th Region (R. 104). Following the signing of the contract, these charges were withdrawn. (R. 106).

No evidence was introduced by Local 523 to explain its action in refusing until July 26 to sign the contract which a majority of the employees had approved.

REASON FOR GRANTING THE WRIT

The Tenth Circuit has decided a federal question in a way which conflicts with the principles announced by this Court in *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), *N.L.R.B.* v. *Shipbuilding Local 22*, 391 U.S. 418 (1968), and *Scofield* v. *N.L.R.B.*, 394 U.S. 423 (1969).

In *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, supra, this Court upheld the right of a union to fine certain of its members who crossed the picket line during a lawful economic strike which had been authorized by

a majority of the members of the local unions involved. In reaching its decision this Court at page 180 of its opinion, stated:

> . . . *the majority rule concept* is today unquestionably at the center of our Federal labor policy. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion . . . (Emphasis supplied)

and at page 195 of its opinion this Court further stated:

> . . . whether Section 8(b) (1) (A) proscribes arbitrary imposition of fines, or punishment for disobedience of a fiat of a union leader, are matters not presented by this case, and upon which we express no views.

In *N.L.R.B.* v. *Shipbuilding Local 22*, 391 U.S. 418 (1968), this Court clarified its earlier decision in Allis Chalmers and held that a union could not lawfully expel a member because he had filed a charge with the National Labor Relations Board. The Court, at page 423-424 of its opinion, said:

> We held in *NLRB v. Allis Chalmers Mfg. Co.*, 388 U.S. 175, 18 L. Ed. 2nd, 1123, 87 S. Ct. 2001 that § 8(b) (1) (A) does not prevent a union from imposing fines upon members who cross a picket line created to implement an authorized strike. The strike, we said, 'is the ultimate weapon in labor's arsenal for achieving agreement upon its terms', and the power to fine or expel a strikebreaker 'is essential if the union is to be an effective bargaining agent . . . .
>
> Thus, § 8(b) (1) (A) assures a union freedom of self-regulation where its legitimate and internal affairs are concerned. But where a union rule penalizes a member for filing an unfair labor practice charge

with the Board, *other consideration of public policy come into play*. (Emphasis supplied.)

In *Scofield* v. *N.L.R.B.*, 394 U.S. 423 (1969) this Court upheld a union rule authorizing fines against members who exceeded specified ceilings for daily pay for piecework production. The Court said (394 U.S. at 429-430):

* * *

> Although the Board's construction of the section emphasizes the sanction imposed, rather than the rule itself, and does not involve the Board in judging the fairness or wisdom of particular union rules, *it has become clear that if the rule invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating* § 8(b)(1). In both Skura and Marine Workers, the Board was concerned with union rules requiring a member to exhaust union remedies before filing an unfair labor practice charge with the Board. That rule, in the Board's view, frustrated the enforcement scheme established by the statute and the union would commit an unfair labor practice by fining or expelling members who violated the rule.
>
> The Marine Workers case came here and the result reached by the Board was sustained, the Court agreeing that the rule in question was contrary to the plain policy of the Act to keep employees completely free from coercion against making complaints to the Board. Frustrating this policy was beyond the legitimate interest of the labor organization, at least where the member's complaint concerned conduct of the employer as well as the union.
>
> Under this dual approach, § 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, *impairs no policy*

> *Congress has imbedded in the labor laws*, and is reasonably enforced against union members who are free to leave the union and escape the rule. This view of the statute must be applied here. (Emphasis supplied.)

When *Allis-Chalmers*, *Shipbuilding*, and *Scofield* are read together, the following principle emerges:

> Specified disciplinary action may be taken by the union without offending Section 8(b) (1) (A) *unless the disciplinary action itself violates some other section of the statutes or is at odds with the public policies which the statute is designed to implement.*

It is the position of Rocket that the disciplinary action taken by Local 523 against its members in this case is at odds with the public policy which Section 7 of the National Labor Relations Act is designed to implement.

Section 7 of the Act (29 U.S.C.A. 157) grants to employees the rights (among others) to (1) form and join unions; (2) bargain collectively through representatives of their own choosing; and (3) engage in concerted activities for the purpose of collective bargaining.

Inherent in the exercise of these rights is the principle of *majority* rule. Minority unions as such are not recognized under the Act (see Section 9(a) of the Act, 29 U.S.C.A. 159(a)). An employer is required to bargain with the representative chosen by the *majority* of his employees, (see Section 8(a) (5) of the Act, 29 U.S.C.A. 158(a) (5)), and his refusal to do so violates Section 7 rights.[3]

In discussing the Wagner Act on the floor of the Senate, Senator Wagner had the following to say with

[3]Medo Corp. v. Labor Board, 321 U.S. 678, 683-84; J.I. Case Co. v. Labor Board, 321 U.S. 332, 338.

respect to what is now incorporated in the National Labor Relations Act as Section 9(a):

> Further to facilitate the procedure of collective bargaining, the bill embraces the principle of majority rule. It states that —
>
> > Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hour of employment, or other conditions of employment.
>
> Collective bargaining is not an artificial procedure devoted to an unknown end. Its object is the making of agreements which will stabilize employment conditions and promote fair working standards. It is well nigh universally recognized that it is practically impossible to apply two or more sets of agreement to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit. For this reason, collective bargaining means majority rule. This rule is conducive not only to agreements, but also to friendly relations. Workers find it easier to approach their employers in a spirit of good will if they are not torn by internal dissent. And employers, wherever majority rule has been given a fair chance, have discovered it more profitable to deal with a single group than to be harassed by a constant series of negotiations with rival factions.

° ° °

Anyone who analyzes the problems and who studies the history of industrial relations will be amazed at the current opposition to majority rule. Certainly

> it cannot be claimed that the rule is lacking solid precedent. It has been applied regularly by governmental agencies and recognized repeatedly by laws of Congress. It was followed by the National War Labor Board created by President Wilson in the spring of 1918. It has been applied consistently by the Railway Labor Board created by the Transportation Act of 1920. The 1034 amendments to the Railway Labor Act provided for it. Public Resolution No. 44, approved last June, in that it provided for elections, must have contemplated majority rule.
>
> ° ° °
>
> . . . .democracy in industry must be based upon the same principles as democracy in government. Majority rule, with all its imperfections, is the best protection of workers' rights, just as it is the surest guaranty of political liberty that mankind has yet discovered. (79 CONG. REC. 7571 (1935), II Legislative History of the National Labor Relations Act, 1935, 2336, 2337).

The public policy inherent in Section 7 is superbly summarized at page 10 of the Brief of the National Labor Relations Board submitted to this Court in *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, supra:

> Implicit in these processes of industrial self-government, as in other forms of concerted, associational activity, is the *principle of majority rule*. As this Court has recognized, 'conflict between employees represented by the same union is a recurring fact' (*Humphrey* vs. *Moore*, 375 U.S. 349-350); 'the complete satisfaction of all who are represented is hardly to be expected' (*Ford Motor Co.* v. *Huffman*, 345 U.S. 338). That the majority choice should prevail, within the area of union competence, is both the source of the union's legitimacy and the only demo-

> cratic method of achieving effective concerted action. *The elaborate time consuming and expensive procedures for balloting on a wide variety of union matters would be remarkably pointless if Section 7 left each participant free to disregard the outcome.* Cf. *Brooks* v. *National Labor Relations Board*, 348 U.S. 96; National Labor Relations Act Section 9(c) (3), 29 U.S.C. 159(c) (3). *In selecting the bargaining agent, in electing officers, in approving bargaining agreements, all are bound by the majority decision. The important rights to self-organization and concerted action would be largely meaningless on any other terms.* On its face, therefore, it seems inherently implausible that, in giving statutory recognition to an employee's right to refrain from engaging in concerted activity, Congress intended to proscribe *the principle of majority rule for labor unions* . . . (Emphasis supplied.)

The Board, in the *Allis-Chalmers* case, recognized that which is obvious in the National labor policy, namely: *majority rule governs*. The policy of majority rule is expressly set forth in Section 9(a) of the Act (29 U.S.C.A. 159(a)), wherein it is stated:

> (a) Representatives designated or selected for the purposes of collective bargaining by the *majority* of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: . . . . (Emphasis supplied.)

The majority rule concept embodied in Section 9(a) of the Act is clearly the means by which employees are ". . . to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective or other mutual

aid or protection . . ." pursuant to the terms of Section 7 of the Act. And by voting whether to accept Rocket's proposal for a new contract, the members of Local 523 were merely carrying out the final step in the collective bargaining process. Consequently, by imposing a fine on its members for no reason other than the fact that a majority of those members voted to accept the new contract proposal and return to work, Local 523 frustrated the expression of the will of the majority and restrained its members in the exercise of their rights under Section 7 of the Act.

Petitioner respectfully submits that this Court in *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, supra, never intended to sanction fines of the type involved in this case. In that case this Court said, at page 195:

> Whether Section 8(b) (1) (A) provides arbitrary imposition of fines or punishment for disobedience of a fiat of a union leader are matters *not presented by this case and upon which we express no view.* (Emphasis supplied.)

The Tenth Circuit summarily disposed of all the issues involved in this matter by holding that the legality of Local 523's conduct depends entirely upon whether or not it can be said the parties were bound by a contract when the employees crossed the picket line. The Court thereafter proceeded to hold that there was no contract when the picket line was crossed and that accordingly, the case was governed by *N.L.R.B.* vs. *Allis-Chalmers Mfg. Company*, supra.

Although it is the position of Rocket that a binding contract was entered into on June 22, when a majority of the employees ratified the agreement reached at the bargaining table, a finding of a violation of 8(b) (1) (A) is by no means dependent upon such a finding. The allegations of the Complaint and the issues they raise are

clear. By way of summary, the Amended Complaint (R. 1) alleges:

> On June 22, the Union and the Employer reached an agreement on all issues; on June 23, the employees ratified the agreement; on June 24, the Union refused to sign the agreement; on June 29, pickets were placed at the Employer's terminals to enforce changes in the agreement; on July 17, employees of Rocket crossed the picket line; on September 27, the Union levied and assessed fines upon the employees for crossing the picket line; by such acts the Union violated Section 8(b) (1) (A).

The Board found all of the foregoing allegations (other than the one alleging a violation) to be true and supported by the evidence (R. 8, 11). The Board found that the issue litigated is whether Local 523 violated Section 8(b) (1) (A) of the Statute (R. 6). The question of whether the agreement reached on June 22, need be ratified by the International is one which may be relevant in a suit for damages under Section 301 of the National Labor Relations Act (29 U.S.C.A. 185), but it is not relevant here. It is utterly immaterial whether or not a contract in the common law sense was or was not reached between the parties prior to July 14. This proceeding is concerned with Section 7 rights of employees and *not* with the right of Rocket to sue for damages for breach of a collective bargaining contract. The sole question which faced the Board was whether the Section 7 rights of the employees were violated by fining employees for crossing the picket line following ratification of the contract by a *majority* of the employees in the bargaining unit.

If the position of Local 523 is sustained in this case, it will mean that the rights of the majority mean nothing. It will mean that the scheme of industrial democracy,

which the National Labor Relations Act is intended to implement and further, will be meaningless. It will mean that the fiat of a single union leader can frustrate the desires and objectives of the majority of the employees in the bargaining unit. It will open the way once and for all for industrial union dictatorships where the ideas of one man can override the desires and aspirations of the majority. In a democracy all power is derived from the consent of the governed. The source of power in a union rests with the members. If Local 523's position is sustained, however, all power will reside not in the governed, but in the hands of a union leader.

It is virtually inconceivable that Congress would enact a law granting to employees the right to bargain through representatives selected by the majority of such employees (see Section 9(a) of the Act) and intend for the rights of the majority to be disregarded after their representative is selected.

Collective bargaining in the United States is experiencing serious difficulties because of the growing tendency of employees to reject settlements reached by their representatives at the bargaining table. If the decision of the Tenth Circuit is permitted to stand, these difficulties will substantially increase because agreements negotiated at the bargaining table will then be subject to rejection not only by the employees, but by an international union official who is far removed from the give and take of the bargaining table and who will be little affected by the pains of a work stoppage. A decision by this Court affirming the principle of majority rule in industrial self-government is urgently needed. The issue presented by this case arises on an almost daily basis, and a failure by this Court to resolve it will only result in increased industrial strife which the National Labor Relations Act was designed to prevent.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

176 NLRB No. 94

D-1832
Tulsa, Okla.

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

TULSA GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 523

AND

THE ROCKET FREIGHT LINES CO.

Case 16-CB-356

DECISION AND ORDER

On July 25, 1968, Trial Examiner Thomas A. Ricci issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Charging Party filed exceptions to the Trial Examiner's Decision and supporting briefs. The Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record

in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated, Washington, D. C. June 18, 1969.

Frank W. McCulloch, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

TXD-435-68
Tulsa, Okla.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

TULSA GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 523

AND

THE ROCKET FREIGHT LINES CO.

Case No. 16-CB-356

R. A. Gritta, Esq., for the General Counsel.
Maynard Ungerman, Esq., of Tulsa, Okla., and *L. N. D. Wells, Jr., Esq.*, of *Mullinax, Wells, Mauzy, Levy and Richards*, of Dallas, Tex., for the Respondent.
Carl D. Hall, Esq., of *Hall* and *Sublett*, of Tulsa, Okla., for the Charging Party.

TRIAL EXAMINER'S DECISION

Statement of the Case

THOMAS A. RICCI, Trial Examiner: A hearing in above-entitled proceeding was held before the duly designated Trial Examiner at Tulsa, Oklahoma, on May 9, 1968, on complaint of the General Counsel against Tulsa

General Drivers, Warehousemen and Helpers, Local Union 523, herein called the Respondent, or the Union. The charge was filed on August 15, 1967, and the complaint issued on March 29, 1968. The issue litigated is whether the Respondent violated Section 8(b) (1) (A) of the statute. Briefs were filed after the close of the hearing by all parties.

Upon the entire record, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Company

The Rocket Freight Lines Co., herein called the Company or the Employer, an Oklahoma State corporation, is engaged as a short line hauler of class "A" motor freight and cargo moving in interstate commerce, and maintains its principal office and place of business at Tulsa, Oklahoma. During the past 12 months, a representative period, in the course of its operations within the State of Oklahoma, the Employer received gross income in excess of $50,000, for services which were performed pursuant to contracts with, and/or as agent for various interstate common carriers, including, among others, Transamerican Freight Lines, Inc., Transcon Lines, and Time Freight Inc., operating between and among various States of the United States. The complaint alleges, the answer admits, and I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to exercise jurisdiction herein.

II. The Labor Organization Involved

Tulsa General Drivers, Warehousemen and Helpers,

Local Union 523, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

The Issue

Rocket Freight Company does a truck cartage business out of six separate terminals in Oklahoma, and its employees are represented in different parts of the State by three Teamster locals. Its total complement, almost 70 men, constitute a single bargaining unit. For some 18 years the Company has been party to national collective-bargaining agreements with the Teamster International, and its Southern Conference. There have also always been supplemental addenda, or rider agreements, negotiated locally, and relating to special conditions in Oklahoma. In the course of the negotiations during the spring of 1967, the local unions called a strike against the Company to enforce economic demands then being pressed for the terms of the addendum contract. The terminals were picketed on June 7 by the respective locals and all work ceased. The union bargaining committee, led by a Teamster International representative, and management, reached agreement on all terms on June 22, and the employees voted to ratify the settlement on June 22 and 23. All parties understood that there would be no binding contract until the International, with or through its Southern Conference, had approved the agreement. Such approval was not given until July 19, and on that day the local unions terminated their strike and removed the pickets.

A substantial number of employees, at various terminals and out of all three locals, returned to work, and crossed the picket lines where they were found, before

July 19, some on July 14 and some on July 17. All were back on the job shortly after the 19th.

One of the three locals is Tulsa General Drivers, Warehousemen and Helpers, Local Union 523, which represents Rocket's employees at Tulsa, Ponca City and Pryor. Internal charges were brought within Local 523 against a number of its members who crossed the picket lines and worked while the strike was in force. For having so engaged in strike-breaking activities, the men were fined by the Union $250 each; they then proceeded through the regular established internal union appeals procedures, and the fines were confirmed. Local 523 is the named Respondent in this case, and the act of fining these members is said to have constituted restraint and coercion in violation of Section 8(b) (1) (A) of the Act. There is no indication, nor is it claimed that the Respondent in any way attempted to cause discrimination in employment against any of its members. Unless the facts of this case can be significantly distinguished from the situation presented in *N.L.R.B.* v. *Allis-Chalmers Mfg., Co.*, 388 U.S. 175, the complaint must be dismissed.

The Theory of Complaint

The attempt to remove this case from the reach of the court's holding in *Allis-Chalmers* rests squarely upon an assertion that when the employees in question returned to work on July 17, crossing the picket line of their own local union, there was a contract in effect. For this one reason the argument is made that the strike was "illegal," or "unprotected," and as *Allis-Chalmers* dealt with a lawful strike or picket line, the instant situation is sufficiently distinguished to require a finding that the Respondent Union fine was improperly coercive. By what reasoning the contract, if a binding contract there was,

made the picketing illegal, is not explained. Clearly, however, the complaint stands or falls depending entirely upon whether or not it can be said the parties were bound by contract before July 14.[1]

In their briefs, the General Counsel, and particularly the Company, as Charging Party, urge further grounds for an unfair labor practice finding, but these were not advanced at the hearing, were not litigated, and therefore need not be fully considered here. Especially is it appropriate, on this record, to disregard the contention that even if there was no contract, the fine — in the sum of $250 — was unlawful because "unreasonable." The Respondent was not asked to dispute or to defend against such a charge. It addressed itself purely to the question of whether there was or there was not a contract in effect at the time the employees resorted to the back-to-work movement.

The record in its totality warrants a finding that there was no contract in effect at the critical time. More precisely, in terms of the issue of this case, the evidence as a whole does not support the allegation that the strike, which the employees dishonored, was illegal or unprotected. There is no occasion, therefore, to reach the question whether a union commits an unfair labor practice when it fines it members for crossing an illegal or unprotected picket line. Decision here is not to be taken as passing judgment upon that joint of law.

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[1]From the transcript of hearing:

TRIAL EXAMINER: Mr. Gritta, if it should develop that there was no contract on the totality of the evidence when the hearing is over, that there was no contract until July 26th, would it still be a theory of this complaint that it was 8(b)(1)(A) for the union to have fined these members for crossing a picket line?

MR. GRITTA: You are putting me in a difficult position, because the complaint is couched, and the General Counsel's position is there was a contract. I don't want to alter that position.

Pertinent Facts: Analysis

This Company's collective-bargaining contractual relationship over the years has been as much with the Teamsters International, as it has been with the local unions in its limited territory. Basic to the local supplement it was negotiating in June and July of 1967 were two National Master Freight Agreements, one for over-the-road motor freight and one for local freight forwarding pickup and delivery. Each of these is literally executed, as were those which preceded them, between Rocket Freight and "National Over-the-Road and City Local Cartage Policy and Negotiating Committee and Local Union No. 523, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America." Each master contract also specified: "In addition to such Local Unions, the National Over-the-Road and City Cartage Policy and Negotiating Committee of the IBT, hereinafter referred to as 'Union' or the 'National Union Committee,' is also a party to this Agreement and the agreements supplemental hereto." Clearly the Company was always dealing with a labor organization, or bargaining committee, much broader in scope than the particular local unions found in the State of Oklahoma. There was not any Board certification underlying the collective-bargaining relationship.

The 1964-1967 master contracts, expiring on March 31, 1967, were reopened on December 2, 1966, by formal notice "on behalf of each of the Teamster locals and affiliates," sent to the Company by the National Policy Negotiating Committee in Washington, signed by the International Chairman. This was followed, on December 22, 1966, by an invitation, from the same National Committee, to a bargaining meeting in Washington to discuss the Union's demands for new master agreements; and this letter also advised the Company that "each local

union . . . has given power of attorney to the negotiating committee to act in its behalf, subject to overall membership vote on any final offer . . . ." On December 29, 1967, Local 523 advised the Company in writing: "You are hereby notified that the National Over-the-Road and City Cartage Policy and Negotiating Committee, the Southern Conference of Teamsters, and the undersigned local union as bargaining agents for the involved employees desire to negotiate changes or revisions in the National Master Freight Agreement and in all area, regional and local supplements, addendas, appendicies or riders thereto for the contract period commencing April 1, 1967, as provided in Article 37 thereof."

Rocket chose not to attend the National conferences, either for negotiation of the two master agreements, or changes and revision in the supplements. In such cases the Union arranges local conferences with employers at a multiemployer meeting for that purpose, and such a meeting was held on May 15 at Tulsa, Oklahoma. Clarence Mendoiza, an international representative of the Teamsters, invited the Rocket company also to attend. Rocket's representative at that meeting chose not to participate jointly with the other local cartage companies. In consequence Mendoiza met with Mr. Jess Crook, Jr., president of the Company, on May 17, May 24, June 6 and June 22, when the substantive terms of Rocket's Supplement to the master agreements were ironed out. Present also were the officers of the three local unions — Nos. 516, 886 and 523, which operate in Oklahoma. The strike had started on June 7 and picketing was still in progress on June 22 when agreement was reached on all issues.

The bylaws of all Teamster unions require employee ratification as a condition precedent to formal execution of any collective-bargaining agreement. In this instance

the employee votes were taken at the respective separate city terminals on June 22 and 23, Thursday and Friday, and the total vote — all employees counted as a single unit — was to approve the Supplement Agreement. A draft copy of the Supplement, prepared by the local unions, was then forwarded to Washington for approval by the International, but, contrary to the expectations of the local officials and even of International Representative Mendoiza, was disapproved. The strike continued. Finally, on July 19, the International did approve, and the strike was terminated by the locals. The final contract was signed on July 26.

If this record showed nothing more than these activities, current and past, between the Company, on the one hand, and the local unions *plus* the National Over-the-Road and Local Cartage Policy and Negotiating Committee, on the other, it would have to be said the Employer was bargaining at all times with a labor organization broader than Local 523, and its sister Oklahoma locals, when negotiating the addendum to the 1967 master agreements. The formal written correspondence reopening old contracts and arranging meetings for new ones, came from the National organization, and the very negotiating conferences were held with an international representative. And, of course, the fact that the negotiations were intended to lead to modification, for local problem adjustments, of the master agreements, inescapably ties the National group with the local union and unions.

All doubt on this score is removed by the further evidence, in the form of oral testimony, proving beyond question that all parties, the negotiators as well as the employees themselves, knew the settlement agreement had to be approved by "Washington," or the International Union, before any binding contract could come into being. Thus Mr. Crook, the company president,

said that at the last meeting Mendioza "said he would highly recommend these [the terms of the settlement] to the membership . . . that he would highly recommend those to the International." "Mr. Mendioza's words were, if the membership ratified the agreement that he would highly recommend it to the International."

Q. (By Mr. Gritta) Mr. Crook, after the 22nd of June meeting adjourned, did Mr. Mendoiza or Mr. Boyd indicate to you any time by which you could expect an answer from the International?

A. Yes.

Q. What did they tell you?

A. Their plans were — June 22 I believe was on a Thursday — Mr. Mendoiza made the statement he had to go to Washington I believe on the following Monday and they were to get the supplements typed out, each local, typed out, special delivery mail to Mr. Mendoiza at Dallas so he could have them when he went to Washington on Monday, which would have been the 26th of June.

Mr. A. W. Jenkins, the Company's board chairman, gave like testimony: ". . . Mr. Mendoiza did bring up the fact this would have to be approved by the International. He said that it would be taken before the people as soon as possible, and if it was approved, he was leaving on Monday for Washington if my memory serves me correctly . . . ."

It will be recalled that the employee ratification vote came on June 22 and 23. Boyd, an official of Local 523, reported this fact to Jenkins, and, as the latter continued to testify: "He called me at the office and told us we had a contract that had been ratified and he gave me the vote of the various locals, and they would

write up this agreement that weekend so it would be airmailed to Mr. Mendoiza in Dallas so he could take it to Washington on Monday. He made it quite clear . . . he said we might not be able to get this accomplished by worktime Tuesday morning but he was sure not later than Wednesday we would have word back from Washington and would be in a position to go back to work."

The employees also knew there was no contract in effect until approved by the International Union. Maurice Cates, an employee at the Muskogee terminal: "Our business agent told us that due to this coming on the weekend and they had to go to a conference in Hot Springs, Arkansas, that it would probably be Monday or Tuesday or Wednesday at the latest before the International, the Southwest Conference I think were the words he used, would ratify the contract." Owen Brooner, of the Pryor terminal:

> Q. (By Mr. Gritta) Did Mr. Boyd make any statement to the members at that ratification meeting after the vote was taken?
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> A. To the best of knowledge it sounded to me like he said, "You boys have got a contract."
>
> ° ° ° ° ° °
>
> Q. (By Mr. Ungerman) At the time of the ratification did you know the International would have to approve the contract?
>
> A. Well, I think it was mentioned they would have to ratify it, yes, sir.

Brooner stayed on strike "because it [the contract] wasn't okayed yet." He crossed the picket line on July 17, although "I knew it [the contract] was not ratified at that time, yes, sir."

Robert McLarenden, a picket captain, said that after the Tulsa employees had voted to ratify, Boyd said "You now have a contract." But McLarenden also admitted that even before the ratification vote he "had heard" that "the International, Southern Conference, had to approve it."

It is an elementary principle of contract law that the question of whether or not a contract has come into being is determined by the intent of the parties, however evidenced. These parties had a clear understanding that there would be no contract until the International Union had given its approval. The General Counsel seeks to avoid all the foregoing convincing evidence by pointing to the fact that at the major terminals — particularly Tulsa, where 35 of the 60 or so employees work, — the pickets were removed during the weekend of June 24-25, as the employees voted to ratify. Mendoiza and Boyd were that confident that the International would approve, and felt sure the strike would be over by Tuesday or Wednesday. They saw no point in continuing any irritating picketing with all immediate persons now amicably disposed. By Thursday word reached Tulsa that the International had disapproved, and back came the pickets, even at Tulsa. In such a sequence of events, it can hardly be inferred — in the face of the direct evidence — that by its temporary removal of the pickets Local 523 precluded itself from thereafter asserting there was no contract yet. The important, and absolutely determinative fact, is that the strike never ceased; no one returned to work, pickets or no pickets. It was the Union's policy to strike to enforce economic demands that the Supreme Court in *Allis-Chalmers* said could lawfully be enforced against its members by internal charges and imposition of fines. The picket line is only one form of evidence to show strike action. When a large group of employees changed their minds, on July 14 and 17, and started

work in defiance of their union's policy decision, they effectively broke the strike and thereby forced the International to approve the supplement agreement tentatively reached on June 22.

I find that the strike in this instance was at all times lawful and that therefore the action by Respondent Local 523 in fining those members who broke ranks did not constitute an unfair labor practice. I shall therefore recommend dismissal of the complaint.

The Company, which filed the charge, advances a theory of complaint greatly at variance from that of the General Counsel. It argues that even assuming there was no contract in effect until the International approved on July 19, the Union could not lawfully fine the members who scabbed. This contention rests upon an assertion that a majority of the employees in the bargaining unit agreed, or voted, or simply acted in harmony to discontinue the strike. Because, according to the Company, a majority so decided, basic principles of democracy demand that their will must prevail at any given moment, even to the extent of flauting union policy or decision, and even to the point of frustrating decisions regularly reached by the union hierarchy. I find no merit in this argument as support for this complaint.

To start with, it is by no means certain the Charging Party has standing in a complaint proceding so drastically to alter the complaint theory of the General Counsel. More important, it is not true that a majority of the employees involved formally voted to put an end to the strike. There came a time when McLarenden, self-styled ring-leader of the strikebreakers, called other strikers to a meeting at the Tulsa terminal to discuss the situation. He also invited Jenkins, the company board chairman. There was talk of the Employer going out of business if the strike continued too long, and a

petition was prepared for employee signatures. McLarendon traveled in the company plane to other terminals to seek added signatures there. The petition, with 36 names, is addressed to the "Office of the President, International Brotherhood of Teamsters," and reads as follows: "The following members of the Teamsters Local No. 523 hereby respectfully request that you sign the most recently, or latest, contract negotiated with the Rocket Freight Lines Company, and which contract was accepted by the majority of the membership of Teamsters Locals 523, 516, and 886."

I view this petition as but a form of within-the-Union discussion, between members and their officers. It is no more than a reminder, as it were, to the higher officials, of the employee ratification vote taken a week or two earlier. It had nothing to do with any decision to quit the strike.

There is a second petition, dated at about the same time, and addressed to the Fort Worth Regional Office of the National Labor Relations Board. "The following employees of the Rocket Freight Lines Company, members of Teamsters Locals No. 523, 516 and 886 hereby respectfully request that you rule in favor of the Rocket Freight Lines Company in their case against the International Headquarters of Teamsters." When the International first refused to approve the settlement agreement, on about June 29, and the strike continued, the Company filed charges against the International and each of the three local unions, alleging violations of Section 8(b)(3) of the Act, on the ground that these unions had refused to sign a contract completely agreed upon. This charge was later withdrawn.[2] When a

[2]The General Counsel argues that the International's action in approving the contract after the Section 8(b)(3) charge was filed proves there never was any requirement for International approval. *Post hoc, propter hoc.* This reasoning merits no discussion.

group of employees asked the Board's Regional Office to rule in favor of the Company against the International in the Section 8(b)(3) case, they may have indicated, obliquely, their view that the International was obligated to agree. More likely, their intent was to bring pressure upon the parent organization to yield to the employees' desires in the matter. In either case, it represented additional recognition on their part that International approval was a necessary requirement in the contract negotiations. Certainly, this second document also falls short of representing a majority vote to abandon the strike.

What the Company is really saying here is that majority decision by the employees is found in the fact that a majority returned to work across the picket lines. If this be good basis for distinguishing this case from Allis-Chalmers, it makes a shambles of that decision. It would mean that a union may fine members but only if a minority disregard the union policy. There is nothing in the language of the decision pointing to such a qualified rule. On a broader basis the Company says that fundamental principles of democracy demand that the employee ratification vote preempts all other considerations, that it is somehow unfair, not nice, undemocratic, for any group of union officials or for distant parent organizations, to frustrate the will of a single bargaining unit majority, in this fashion. The argument brings echoes of *Borg Warner* in reverse.[3] There the Employer insisted that before there could be a binding collective-bargaining agreement the Company's last offer must be accepted by its employees in a ratification vote. The Supreme Court rejected this view, in part because: "It substantially modifies the collective-bargaining system provided for in the statute by weakening the independ-

[3] *N.L.R.B. v. Wooster Division of Borg Warner*, 356, U.S. 342.

ence of the 'representative' chosen by the employees. It enables the employer, in effect, to deal with its employees rather than with their statutory representative."

The essential purport of the argument made by the Rocket Freight Company here is to separate its own employees from their National Negotiating Committee, or, in effect, the International Teamsters Union. But it is the chosen representative of the employees themselves which speaks, and not a majority of the employees in a particular bargaining unit which at any given moment prefers a course of action deemed desireable by their employer. Indeed, as shown above by the two petitions signed by the employees, even those employees of this Company who wished to return to work, continued to recognize the authority they had extended to the Internatimal Union or the Southern Conference of Teamsters.

RECOMMENDATION

It is hereby recommended that the complaint against Tulsa General Drivers, Warehousemen and Helpers, Local Union 523, be, and it hereby is, dismissed.

Dated at Washington, D. C.

Thomas A. Ricci
Trial Examiner

APPENDIX B

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

May Term, 1970

No. 342-69

THE ROCKET FREIGHT LINES CO., *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

AND

TULSA GENERAL DRIVERS, WAREHOUSEMEN & HELPERS LOCAL UNION 523, *Intervenor*

ON PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Carl D. Hall, Jr. of Hall & Sublett for Petitioner.

Nancy Sherman (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, and Lawrence I. Kipperman were with her on the brief) for Respondent National Labor Relations Board.

L. N. D. Wells, Jr. of Mullinax, Wells, Mauzy & Collins for Intervenor Teamsters Local Union 523.

Before LEWIS, Chief Judge, and BREITENSTEIN and SETH, Circuit Judges.

LEWIS, Chief Judge.

The Rocket Freight Lines Co. (Rocket) seeks review of an order of the National Labor Relations Board dismissing a complaint issued by the Regional Director of the Sixteenth Region alleging the commission of an unfair labor practice in violation of section 8(b) (1) (A) of the National Labor Relations Act, 29 U.S.C. § 158(b) (1) (A), by Local 523 of the Teamsters (Local 523). On Rocket's charge, the Regional Director complained that Local 523 had levied a fine of $250[1] against each of 17 member-employees for crossing picket lines and returning to work after the Local had consummated a collective-bargaining agreement which was binding between Rocket and the Local. The imposition of fines for breaking an unprotected strike was alleged to contravene the employees' rights to form and join unions, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, all in derogation of their section 7 rights, as referred to in section 8.[2] Local 523, as intervenor, responded that the fines had been levied as a lawful imposition of internal union discipline upon members who had broken their own strike. The Board found the contention of the Local to be sound in fact and law.

The following neutral facts, resting largely on stipulations, may be summarized. Rocket operates a trucking

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[1]The procedures by which the fines were imposed have not been challenged; rather, the justification for the fines is attacked.

[2]Section 8 of the National Labor Relations Act provides in pertinent part:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) *employees in the exercise of the rights guaranteed in section 7: Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its rules with respect to the acquisition or retention of membership therein . . . (emphasis added).

concern in Oklahoma where 70 of its employees, constituting a single bargaining unit, are represented at six terminals by three locals of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (International). Local 523 covers Rocket employees at the Tulsa, Ponca City, and Prior terminals. From 1964-1967 Rocket had been party to a "master" collective bargaining agreement, with wage rates applicable to the Southwest, which was supplemented by riders applicable only to Oklahoma terminals. Two letters sent to Rocket in December 1966, from the International's Over-the-Road and City Cartage Policy and Negotiating Committee (Negotiating Committee) and signed by the International's General President initiated negotiations for a collective-bargaining agreement to replace the current one terminating on March 4, 1967. By letter to the General President on January 9, 1967, Rocket requested that the negotiations be conducted in Oklahoma rather than Washington, D.C. The Negotiating Committee, in turn, notified Rocket that International Representative Clarence R. Mandoiza had been appointed to head a subcommittee in charge of the Oklahoma negotiations. At a May 15, 1967 meeting attended by other motor carriers, Rocket withdrew and advised Mandoiza that it wished to bargain separately.

Thereafter, negotiating sessions with Rocket were held on May 17, 24, June 6, and 22. Again, the three locals were present; Mandoiza attended all but the May 17 meeting. On June 6, Mandoiza notified Rocket that a strike would commence on the 7th, and Rocket's employees accordingly went on strike at its six terminals. At the June 22 session, agreement was reached by the bargaining representatives; and on Mandoiza's recommendation, the proposed contracts were ratified by a majority of Rocket's employees on June 22-23. Mandoiza on June 23 stated that he would recommend the contract

to the International for its approval, and there is apparent agreement that the approval was expected no later than June 26. Although picketing was discontinued over the weekend pending approval, no employee returned to work. On June 29 Mandoiza, on behalf of the International or Southern Conference, informed Local 523 that the contract had been disapproved and picketing was resumed at some terminals, including Tulsa.

The action of the International undoubtedly came as a surprise and a disappointment to all, including Rocket's employees. Reflecting this disappointment, the Tulsa picket captain presented the International with two petitions to approve the contract but received no satisfaction. On July 17 the 17 subject employees crossed the Tulsa picket line and returned to work. The then ineffective picket line, as well as those at the other terminals, was removed on July 19, and on July 26 a contract was signed in accord with the original negotiated terms and made effective as of June 26, 1967.

In brief and argument both Rocket and Local 523 present this case to us as one having far-reaching effects on the basis concept of the National Labor Relations Act in the multi-party relationships of national and local unions, union members, management, and employees. For example, Rocket, pointing to the fact that a majority of the union members of the three locals whose contracts were being negotiated voted to approve the contracts submitted, asserts that if such a vote to become effective must run the gauntlet of International's approval then, so concludes Rocket, "the scheme of industrial democracy envisioned by the National Labor Relations Act will be dealt a blow of such staggering proportion as to render it sterile and meaningless." And Local 523, pointing in turn to the fact that Rocket was negotiating with unions and not union members, asserts that "a bargaining agent

is not required as a matter of law to accede to the wishes of an infinitesimal minority of those covered by an area or national contract." The Local then contends that International disapproved the contract because of a disparity between national and local wage scales and then concludes that the "very process of *collective* bargaining is at issue in this case . . . ."[3] We conclude that these arguments must dissolve in the aura of hyperbole when viewed in the light of the issue presented to the Trial Examiner as reflected in the record. The Trial Examiner refined the issue to a determination of whether a binding contract was in effect at the time the subject employees crossed their own picket line. We agree that if such a contract was *not* in effect that the coercive action of Local 523 must be upheld. The Examiner found there was no valid contract and the Board reviewed and adopted the findings, conclusions and recommendations without modification or comment. *See* 29 U.S.C. § 160(e). Our review is thus confined to applying the substantial

[3] Rocket has also alleged only before this court that the International wrongfully refused timely to execute the contract and has failed to explain the month's delay in doing so. Although both the respondent Board and Local 523 have addressed this argument, we are precluded from reviewing the question by 29 U.S.C. § 160(f), which directs us to examine a Board order on petition of an aggrieved party "in the same manner as in the case of an application by the Board under subsection(e) . . . ." The latter provides: "No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." Rocket has not sought to broaden our inquiry by applying under subsection (e), which states that

> [i]f either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before [the Board's agent] . . . the court may order such additional evidence to be taken before [him] . . . and to be made a part of the record.

evidence test to the Examiner's findings in light of the record as a whole. 29 U.S.C. § 160(f); *e.g.*, Love Box Co. v. NLRB, 10 Cir., 412 F2 946, 947, *modified on rehearing on other grounds*, 422 F2 232. We conclude that the Board's order to dismiss must be upheld.

The evidence probing the subjective intent and knowledge of the negotiating parties as to when a binding contract was or could be consummated does not present the usual conflict involving a determination of credibility but resolves to a determination of inferences that can be properly drawn from that evidence. The Board, supporting the Trial Examiner, found that at all relevant times Rocket was bargaining with the International and that the parties had a "clear understanding" that a binding contract was conditional on the International's approval. The record amply supports this finding. The negotiations had twice splintered off from national and state-wide negotiations with International; and International representative had conducted the negotiations and had called the original strike and imposed the picketing; at the closing of local negotiations Mandoiza stated that he would "highly recommend" the negotiations to the International. Although it is quite clear that after approval of the contract by the Local membership that all local parties expected International approval to be immediately forthcoming, still the strike did not end pending that approval. No one returned to work although the picketing was lifted. After International rejected the contract picketing was resumed and no one, other than the 17 employees, returned to work until July 19. Moreover, the petitions to the International can only be construed as persuasion to approve the contract, not as a majority vote to abandon the strike, and as further af-

firmation that the signatories acknowledge the requirement of International approval.[4]

It follows that the Board could properly conclude that the subject members of Local 523 went to work during an authorized strike and could be disciplined for so doing under the mandate of NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175. The union action was not at odds with the National Labor Relations Act nor with any public policy which the Act is designed to implement. *See* Scofield v. NLRB, 394 U.S. 423; NLRB v. Marine Workers, 391 U.S. 418. Rather, the union action falls directly within the policy of the Act as stated in *Allis-Chalmers:*

> Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is

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[4]The two petitions referred to above were addressed to the office of the International's General President. Forty signatures were registered. Each petition requested that the International sign the latest contract negotiated with Rocket and ratified by a majority of the membership of the three locals, which was, of course, the contract ratified on June 23, 1967, and submitted for International approval. Apparently, these petitions were circulated and received after June 29, 1967, the date the International disapproved the contract. A third petition, signed by 36 of the member-employees, was directed to the Sixteenth Region of the NLRB and asked the Board "to rule in favor of the Rocket Freight Lines Company in their case against the International Headquarters of Teamsters." We must assume that this petition followed the previous two and was dated after June 29. Rocket had filed charges with the Board on July 3, 1967, against the International and three locals alleging violations of section 8(b) (3) of the Act on the ground that the unions had refused to approve the agreed on contract. The charge was later withdrawn. The Trial Examiner treated the first two petitions as a single one, but did consider all three in making his findings.

particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "[the] power to fine or expel strike breakers is essential if the union is to be an effective bargaining agent . . ." 388 U.S. at 181 (footnotes omitted).

The petition for review is denied.

In The

Supreme Court of the United States

OCTOBER TERM, 1970

THE ROCKET FREIGHT LINES CO.,
Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD
Respondent

and

TULSA GENERAL DRIVERS,
WAREHOUSEMEN & HELPERS
LOCAL UNION 523,
Respondent

No. 666

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR LOCAL UNION 523 IN OPPOSITION

Opinions Below

The Decision and Order of the National Labor Relations Board dismissing the complaint based upon the charge made by petitioner Rocket Freight Lines against Respondent Union is reported at 176 NLRB No. 94.

The Opinion of the Court of Appeals for the Tenth Circuit, affirming the dismissal, is reported at 427 F. 2d 202.

Jurisdiction

The jurisdictional requisites are adequately set forth at petition, page 2.

Question Presented

Did the Union commit an unfair labor practice with the meaning of 29 U.S.C. §158(b)(1)(A) by fining members who returned to work across a picket line during the course of a lawful strike?

Statute Involved

Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(A), provides:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its rules with respect to the acquisition or retention of membership therein; . . .

Section 7 of the National Labor Relations Act, 29 U.S.C. 157, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

Statement of the Case

Petitioner's Statement of the Case (Petition, pp. 3-6 and 14ff.) is so at odds with the Board's "Findings of Fact" (Petition Appendix A, pp. 4-14) as to require restatement of the case, viz:

Respondent Union imposed fines upon those of its members who crossed their own picket line and returned to work during the course of a strike for a new contract. The breaking of the picket line occurred after negotiators for the Local Union had agreed upon contract terms with the employer, subject to approval by the International. Such approval was not forthcoming, for the Local's negotiators' acquiescence was to a contract which was 50¢ per hour below the national scale.

The complaint upon which the case was tried sought to distinguish *NLRB v. Allis Chalmers,* 388 U. S. 175, on the assertion that the picketing was unlawful in "that when the employees in question returned to work..." crossing the picket line of their own local union, their was a contract in effect.

The theory of the prosecution was that since the strike had assertedly ended, and a contract had assertedly become effective — the picketing was thus "illegal" or "unprotected"; and since *Allis Chalmers* had dealt with a lawful strike— and a lawful picket line, the instant situation was distinguishable.

But the facts as found by the Board's Examiner,

confirmed on review by the Board, and held amply supported by the Court of Appeals were that the bargaining concerned both the Local and the International Union, and that the employer and all parties had a "clear understanding" that a binding contract was conditioned on the International's approval. Such approval was not given; *ergo* no contract. The Circuit Court observed that "the record amply supports this finding," 427 F. 2d 202 at 205.

More specifically, a strike for a collective bargaining agreement began June 7.

By June 22 the bargaining representatives reached agreement, subject to (1) ratification by the Rocket employees, and (2) approval by the International Union.[1]

Thus, as of June 22, there were two conditions precedent to agreement: (1) ratification by the Rocket employees; and (2) approval by the other union parties to the agreement, i.e. the Southern Conference and the National Committee.

The first condition was satisfied, in that a majority of the employees in Oklahoma voted to ac-

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[1]There was also an understanding that the agreement was not final until approved by the Southern Conference of Teamsters and the International Negotiating Committee. Rocket President Crook admitted that he was aware of the necessity for International ratification, and that it had been made clear in the course of negotiations that agreement was dependent on International approval. Additionally, Rocket's Board Chairman, Jenkins, admitted that during the course of negotiations "Mr. Mandoiza did bring up that it would have to be approved by the International."

cept the contract; though the vote in Tulsa (the respondent-local) was 19 against ratification; 15 in favor of ratification, and 5 disputed ballots were undertermined.

The second condition was not met until July 26, when the contract was signed. Meanwhile, the strike and picketing continued until July 19. No work was conducted at Rocket's Tulsa terminal until several of the striking employees broke ranks and went to work on July 17.

In the period from June 29 (when word of the International's rejection of the contract was received), to July 19, Teamsters were continuing the strike in an effort to force Rocket to more nearly approach the National contract wage standards. Rocket was opposing this effort by meetings with employees, advising them that continuation of the strike would result in Rocket's liquidating its business, and throwing the employees out of their jobs.

The Company's propaganda and "back to work" efforts were successful in persuading several of the strikers to go back to work on July 17.

So by July 19, it became apparent to Union leaders that the position of those who were seeking to attain higher wages and improved conditions was so deteriorating that on that date the picketing was abandoned, and the strike broken.

With the breaking of the strike, it became ap-

parent that it was hopeless for International to hold out longer. So the contract was signed, on the employer's terms.

In early August, charges were brought against seventeen members of Respondent Local Union "for breaking their own picket line," and they were each notified to appear before its Executive Board to answer charges asserting that they had broken the picket line. Hearing on these charges was held pursuant to ample notice.

A written decision was rendered which after procedural recitals, summarized the evidence and found, *inter alia,* that seventeen named members of the Local Union, on July 17, 1967, knowing that there was "a legal and valid picket line . . . crossed said picket line and returned to work." It was also noted in the findings that: "Each of the accused admitted that on Monday, July 17, without the Local Union's approval, that they returned to work across their own picket line."

The Local Union Executive Board accordingly found the cited members "guilty as charged of violating Article XIX, §7 of the Teamster's constitution," and assessed a fine against each of them.

On the above facts the NLRB found that there was no contract absent acquiescence by International; that in the absence of contract, the strike was lawful, that picketing in support of the strike was lawful and that the Union could lawfully dis-

cipline those of its members who violated the picket line.

ARGUMENT

This is a factual case. Petitioner's rendition of the facts is far removed from the facts of record and found by the Board. When viewed in the perspective of the facts as found by the Board, which the Court of Appeals has held to be "amply" supported by the record, it comes clear that there is no conflict of decisions.

This case is governed by *NLRB v. Allis Chalmers*, 388 U.S. 175, sustaining the Board's holding, 149 NLRB 67, that a union does not violate §8(b)(1)(A) of the Act when it imposes and enforces fines upon members who crossed a lawful picket line in support of a lawful strike.

Here the strike was lawful—in an effort to prevent employer from broadening the wage differential existing as between that paid by truckers throughout the nation, and that paid by Rocket. International has a legitimate interest in seeing that the wage differential is not widened.

Implementing that legitimate interest, the National Union officials withheld approval of a grossly substandard agreement.

Employer countered by threatening to close its doors; and providing transportation in the Com-

pany airplane to petition circulators, who had become convinced that the employer's threat to liquidate was not an idle one.

The principal means by which the Union could defend against this employer's assault on its wage standards, was to maintain strike solidarity. The picket line was important in its maintenance. Accordingly, reliance upon the solidarity and loyalty of the strikers was basic to maintenance of wage standards. Union had a right to discipline those whose lack of loyalty to the Union's aims, served to undercut its bargaining power. *Allis-Chalmers*, 388 U.S. at 181:

> "Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and '[the] power to fine or expel strike breakers is essential if the union is to be an effective bargaining agent. . .'"

Nor is Petitioner's case improved by redundant appeal to the principle of "majority rule"; for the question which Petitioner ignores is: "A majority of what?" Not a majority of the more than 2,000 members of the Respondent Tulsa Local, not a

majority of those covered by the National Contract, not even a majority of the Tulsa Rocket employees; for 19 of these voted against ratification—only 15 for ratification.

There is no evidence to support the redundant assertion that the contract was "acceptable to the Union membership," as the attack on the Board's decision asserts.

True, a majority of Rocket's Oklahoma employees voted to ratify the contract. But the contract is not with the employees—it is with the bargaining agent, which consists of three Oklahoma Local Unions, plus the National Over-the-Road, etc. Negotiating Committee, plus the Southern Conference of Teamsters.

And a bargaining agent is not required as a matter of law to accede to the wishes of an infinitesimal minority of those covered by an area or national contract.

Multi-employer bargaining is an established fact. Cf. *NLRB v. Truck Driver's Union*, 353 U.S. 87 at 94; 1 L. Ed. 2d 676 at 680-681. It could not operate if the majority of those employed by a single employer (yet constituting a miniscule minority of those covered by the multi-employer contract) could impose their will upon the vast majority and, as here attempted, force conclusion of a contract.

which is more than fifty cents an hour below the scale which the solidarity of their union brothers has established.

Accordingly, certiorari should be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1970

THE ROCKET FREIGHT LINES, CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 666

THE ROCKET FREIGHT LINES, CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 18-25) is reported at 427 F. 2d 202. The Board's decision and order (Pet. App. 1-17) are reported at 176 NLRB No. 94.

JURISDICTION

The judgment of the court of appeals was entered on June 12, 1970. The petition for a writ of certio-

rari was filed on September 8, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board properly concluded that a union did not violate Section 8(b)(1)(A) of the National Labor Relations Act when it fined its members who worked during a strike.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition, pp. 2-3.

STATEMENT

Petitioner operates a trucking business from 6 terminals in the State of Oklahoma, where 70 of its employees are represented by 3 locals of the International Brotherhood of Teamsters (the "International"). Local 523[1] represents petitioner's employees at the Tulsa, Ponca City, and Prior terminals (Pet. App. 5-6; R. 25-26).[2] For many years, including 1964-1967, petitioner has been party to "master" collective bargaining agreements negotiated with the International's National Over-The-Road and City Policy and Negotiating Committee (the "National Negotiating Committee"). The master contracts are supplemented

[1] Tulsa General Drivers, Warehousemen & Helpers Local 523.

[2] "R." refers to the joint appendix filed in the court below.

by rider agreements, negotiated locally, relating to special conditions in Oklahoma (Pet. App. 5; R. 65-66).

In December 1966, in a letter to petitioner signed by the International General President, the National Negotiating Committee stated its desire "on behalf of each of the Teamster locals and affiliates" to negotiate revisions in the master agreements which were to expire on March 31, 1967 (Pet. App. 8; R. 69-73). A subsequent letter invited petitioner to a bargaining meeting in Washington, D.C., to discuss the Union's proposals for revision. This letter advised petitioner that "[e]ach local union * * * has given power of attorney to the negotiating committee to act in its behalf" (Pet. App. 8-9; R. 73-84). On December 29, Local 523 advised petitioner in writing that "[T]he National * * * Negotiating Committee, the Southern Conference of Teamsters, and the undersigned local union as bargaining agents for the involved employees desire to negotiate changes or revisions in the National Master Freight Agreement and in all area, regional and local supplements, addendas, appendices or riders thereto" (Pet. App. 9).

In response to these letters, petitioner wrote the International General President requesting that negotiations be conducted in Oklahoma rather than Washington. The National Negotiating Committee acceded and notified petitioner that International Representative Clarence Mandoiza had been appointed to head a subcommmittee for the Oklahoma negotiations (Pet. App. 9; R. 74-76). At a May 15 meeting petitioner informed Mandoiza that it did not wish to bargain

jointly with other Oklahoma motor carriers and Mandoiza agreed to conduct separate negotiations with petitioner (Pet. App. 9; R. 28, 68-69).

Mandoiza, representatives of the three locals representing the unions, and President Jess Crook, Jr. and Board Chairman A. W. Jenkins for petitioner held negotiating sessions on May 17, May 24, June 6, and June 22[3] (Pet. App. 9; R. 29-30, 36, 37, 40, 49). At the June 6 meeting petitioner refused to grant a wage proposal, and Mandoiza notified it that a strike would begin the next day. A strike did begin at that time (Pet. App. 5, 9; R. 29, 35, 41).

At the June 22 session the bargaining representatives reached an agreement, and Mandoiza undertook to submit it to the membership for ratification (Pet. App. 9-11; R. 29-30, 98, 100-102). He told the Company negotiators, however, that even if the membership ratified the contract, it would not be binding until it was submitted to and approved by the International (Pet. App. 10-13; R. 37, 43, 49-50). Ratification occurred on June 22 and 23, and the pickets were removed (Pet. App. 5, 10; R. 30-31, 46, 48). Since the International had not yet approved the contract, however, no one returned to work (Pet. App. 12-13; R. 34-35, 38-39, 43, 46, 48-50, 58-59, 62). On June 29, the International notified the Company that it disapproved the contract (Pet. App. 10; R. 44, 53). Picketing was then resumed, and the strike continued (Pet. App. 13; R. 34-35, 38-39, 44, 48, 58-59).

About July 17 a number of employees returned to work in defiance of the International's decision and

[3] Mandoiza was not present at the May 17 session.

effectively broke the strike. Two days later, the International approved the tentative agreement of June 22 (Pet. App. 13-14; R. 39, 44, 78-80, 85-87). Thereafter, however, Local 523 brought charges under its internal procedures against 17 members who had returned to work at the Tulsa Terminal while the strike was in progress (Pet. App. 6; R. 76-78, 88). After notice and a hearing,[4] the members were each fined $250 for strike-breaking (Pet. App. 6; R. 78-81). The fines were upheld by the Union's appeals tribunal (Pet. App. 6; R. 81-84). Petitioner then filed a charge with the Board, alleging that the fines improperly coerced its employees in their collective activities.

The Board, in agreement with its Trial Examiner, found that at the time the employees dishonored the picket line no contract was in effect and that a majority of the employees in the bargaining unit had not formally voted to abandon the strike. The Board therefore concluded that the strike was lawful and, on the authority of *National Labor Relations Board* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, that the Union did not violate Section 8(b)(1)(A) of the Act by fining the members who crossed the picket line and went to work during the strike. Accordingly, the Board dismissed the complaint (Pet. App. 6-7, 14-17, 1-2.) The court of appeals upheld the Board's findings and its order (Pet. App. 18-25).

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[4] At the hearing, the charged members admitted that "on Monday, July 17, without the Local Union's approval, that they returned to work across their own picket line" (R. 79).

ARGUMENT

National Labor Relations Board v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, holds that a union does not violate Section 8(b)(1)(A) of the Act by fining members for abandoning a lawful strike validly called by the union. Petitioner's attempt to remove this case from the reach of that decision rests, in part, upon the premise that there was a contract in effect when the 17 disciplined employees crossed the picket line and that this contract made a continued strike illegal. This assumption is contrary to the finding of the Board (Pet. App. 7), sustained by the court below (Pet. App. 22-24), that the contract negotiated at the local level never took effect since International approval was required and not obtained. Such an evidentiary issue does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491. Moreover, the facts summarized in the Statement (*supra*, pp. 4-5) show that there is ample support for the Board's finding.

Nor does the record support petitioner's further contention that a majority of the employees had voted to end the strike, and thus the effect of the Board's decision is to undermine the principle of majority rule in industrial self-government. As the court below pointed out (Pet. App. 23-24):

> Although it is quite clear that after approval of the contract by the Local membership that all local parties expected International approval to be forthcoming, still the strike did not end pending that approval. No one returned to work although the picketing was lifted. After International re-

jected the contract picketing was resumed and no one, other than the 17 employees, returned to work until July 19. Moreover, the petitions to the International can only be construed as persuasion to approve the contract, not as a majority vote to abandon the strike, and as further affirmation that the signatories acknowledge the requirement of International approval.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1970.

[5] Two petitions, signed by about 40 employees, were sent to the International General President, each requesting that the International sign the contract negotiated at the local level. The same group later filed a petition with the Board's Regional Director urging "approval" of an unfair labor practice charge filed by the Company against the International based on its refusal to approve the contract; this charge was later withdrawn (Pet. App. 24, n. 4.).

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